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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO.4340 OF 2004

PETITIONER Jitendra Singh Bagga, S/o. Sardar Surjit Singh Bagga, Aged about 43 years, Occupation – Business, R/o. 6-A, 25-Bunglow, Vyapar Vihar Road, Bilaspur (Chhattisgarh)

versus

RESPONDENTS

1. Central Warehousing Corporation (A Government of India Undertaking) through Regional Manager, Central Warehousing Corporation Regional Office, New Market, T.T. Nagar, Bhopal (M P)
2. Ware-house Manager, Central Warehousing Corporation, Tirfra, Bilaspur (Chhattisgarh)

Present : Shri Manindra Shrivastava, learned Sr. Advocate with Shri Amrito Das, learned counsel for the petitioner.
Shri Praveen Das, learned counsel for the respondents.

ORAL ORDER
(Passed on 5th May, 2006)

This writ petition is directed against the order of the Central Warehousing Corporation dated 02.12.2004 black-listing the petitioner for a period of 5 years from participating in tender enquiries of CWC and suspending/banning all trade relations with him. It was also directed that no lease be issued/sold or business be done with any firm or company in which the petitioner is a partner or a Director. The main contention of Shri Manindra Shrivastava, learned Sr. Counsel for the petitioner is that such an adverse order has been passed by the respondent-Corporation without giving him notice and without giving him an opportunity of being heard.

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(2) Opposing the writ petition, the respondents have filed return. In the return, it is stated that the petitioner was given H & T ((Handling & Transport) contract in which he was required to handle and transport the stocks of rice stored in the godown of the respondent-Corporation to various destinations. It is alleged that on 25.07.2002, 479 bags of broken rice was detected in the consignment transported by the petitioner. FIR was lodged and a criminal case was registered against the concerned persons including the petitioner. It is stated that after the investigation, jurisdictional Police have filed the charge-sheet against the petitioner and other persons involved in the commission of crime, in the Court of J.M.F.C., Balodabazar u/S 420/34, 120 (B) of IPC read with Section 3 & 7 of Essential Commodities Act. Apart from the above claim, it was also contended that before the impugned order was passed blacklisting the petitioner, the petitioner was served with a show-cause notice dated 12.08.2002 marked as Annexure-R/1. I have perused Annexure-R/1 produced at page 67 of the paper-book. It reads as follows:

"CWC/RO-BPL/BUS-H&T/BTPR-I/2002 6779 12th August, 2002.

SHOW CAUSE NOTICE

Whereas a regular H&T contract was awarded to Shri J.S. Bagga AT Central Warehouse, Bhatapara-I for a period of two years w.e.f. 24.7.2000 vide letter No: CWC/RO-BPL/BUS-H&T/Bhatapara/2000, dt. 29.8.2000 and the same was extended as per the agreement for a period of 6 months beyond 23.7.2002.

And whereas he was required to dispatch a rice rake from Central Warehouse, Bhatapara-I to Jabalpur and when the said rake of rice was loaded on 24.7.2002/25.7.2002 from BHATAPARA to JABALPUR on behalf of Food Corporation of India and while loading was going on, his truck Driver of Truck No: CG-10-ZB-0355 has changed the bags by colliding with some Millers and instead of Raw Rice Common, complete broken rice was loaded in the wagon and when the same was noticed, it was unloaded as reported and was brought back to the Warehouse and again 240 bags of Raw Rice Common was sent by the Warehouse Manager to complete the wagon. Under these circumstances, he is liable to make good

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the losses suffered by the Corporation, under clause No. XII (b)(d) read with Clause Nos. XXI (4)(27)(30) of the H&T Tender. Moreover, whatever default will be found at the destination, the same will be recovered from him.

He is also hereby asked to explain as to why his regular Handling & Transport contract CWC, Bhatapara-I, should not be terminated under Clause No: X (b) of the H&T tender, due to breach of trust.

(S.C.S. Rao)
REGIONAL MANAGER

To,
Shri J.S. Bagga,
H&T Contractor,
Opp. Priyadarshani Nagar,
Ring Road,
BILASPUR.

CC: The Commercial Manager (IB &D), CWC, CO, New Delhi."

(3) In paras 1 and 2 allegations are made against the petitioner in the matter of transporting raw rice. Having made those allegations, in the last paragraph the petitioner was called upon to explain as to why the regular handling and transporting contract awarded to the petitioner should not be terminated under Clause No. X (b) of the H & T tender due to breach of trust alleged to have committed by him. Thus, it is quite clear that Annexure-R/1 notice is a notice given to the petitioner with regard to a particular contract, calling upon the petitioner to show-cause as to why that contract should not be terminated on the ground of breach of terms of contract. If a person like the petitioner has to be blacklisted which has a serious civil consequence, the petitioner should have been given a notice calling upon him to show-cause against the proposed blacklisting. It is not the case of the respondent that apart from Annexure-R/1 notice, any other notice was given to the petitioner calling upon him to explain his conduct with regard to the proposal of the Corporation for blacklisting him for a period of five years from participating in tender enquiries of C.W.C. and

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suspending/banning all trade relations with him. Therefore, it cannot be said that before passing the impugned order of blacklisting, show-cause notice proposing to blacklist the petitioner was issued. The petitioner was not given a fair opportunity of being heard as required in law and mandated by Article 14 read with Article 19 (1)(g) of the Constitution of India. In that view of the matter, I allow the writ petition and quash the impugned order Annexure-R/2 dated 02nd December, 2002. However, this order shall not come in the way of the respondent-Corporation taking appropriate steps, in accordance with law to blacklist the petitioner, if they are so advised and they have good reasons to do so. No costs.

Sd/-
Chief Justice

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